

Telekom Malaysia Bhd v Ramli bin Akim

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COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO S-02-800
OF 2005

JAMES FOONG, RAUS SHARIF AND ABDULL HAMID EMBONG
JJCA

25 OCTOBER 2007

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*Labour Law — Industrial Court — Award — Factors and considerations to be
taken into account*

C

*Labour Law — Industrial Court — Award — Loss of future earnings awarded
— Whether industrial court erred in awarding loss of future earnings*

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*Labour Law — Industrial Court — Claim for back wages — 53 months back
wages was awarded — Whether arbitrary — Industrial Court Practice Note No
1 of 1987*

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This was an appeal against the decision of the high court dated 24 June 2005 which dismissed the appellant's application for judicial review to quash the Industrial Court Award No 1237 of 2004 under O 53 of the Rules of the High Court 1980. The respondent was employed by the appellant as 'pembantu teknik rendah' on 5 July 1972. Over the years, the respondent was promoted several times. On 16 February 1996 he was holding the post of head of human resources, Sabah. Towards the end of 1996 there was a reorganisation of the appellant. Under the reorganisation, the respondent was emplaced as assistant manager with a monthly salary of RM3,042. A dispute arose. To the respondent, his placement was a demotion. During the same period, the appellant implemented a Voluntary Reduction Programme ('VRP'). The respondent was invited to participate in the package under the VRP. On 27 May 1997 the respondent accepted the VRP. The respondent service was terminated on 1 June 1999 pursuant to the VRP scheme. He was paid RM114,075. The respondent contended that he was forced to accept the VRP scheme. Representation was made under s 20 of the Industrial Relations Act 1967 ('the Act'). On 30 October 1999, the minister referred the matter to the industrial court. The industrial court in Award No 928 of 2002 dated 1 November 2002 ('first award') ruled that the respondent was constructively dismissed without just cause and excuse. In making the first award, the learned chairman noted that parties should be given a chance to be heard on the issue of appropriate remedy and directed parties to appear before the

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A court on a date to be fixed by the court. On 28 September 2004, the industrial court handed down Award No 1237 of 2004 ('second award'). The industrial court held that it was not proper or expedient to grant the respondent the normal relief of reinstatement. It therefore awarded the respondent backwages of 53 months, loss of future earnings and compensation in lieu of reinstatement. The appellant then moved the high court for an order of certiorari to quash the second award. On 24 June 2005 the high court dismissed the application.

C **Held**, allowing the appeal:

- D (1) The basic approach in awarding backwages had been that the workman was awarded a sum of backwages arrived at by multiplying his monthly remuneration with the number of months between the date of his dismissal and the date of the award. However, there was a general practice of limiting the award of backwages to 24 months. This was in line with the Industrial Court Practice Note No 1 of 1987 ('Practice Note') (see para 10).
- E (2) Although the Practice Note was merely a guideline and per se it was not wrong in law for the industrial court to award backwages exceeding the 24 months, there must be justifiable circumstances to warrant a departure from the Practice Note. The industrial court must, in exercising its discretion do so in accordance to established principle of justice and fairness. It was for this reason and to avoid arbitrariness in the award of backwages that the Practice Note was formulated. On the facts of this case, the court was of the view that there were no justifiable circumstances to warrant the departure from the Practice Note (see para 13).
- G (3) The industrial court had failed to consider that although the respondent filed his unfair dismissal claim in 1997, the Minister only referred the case to the industrial court on 31 January 1999, which was more than two years late. Then there was the delay in disposing the case due to circumstances which could not be attributed solely to the appellant. Thus, it was unfair for the industrial court to award the respondent full backwages without limiting the same to 24 months as it had the effect of punishing the appellant for the delay caused by the Minister as well as the industrial court itself. By failing to consider the said relevant matters, the industrial court had committed an error of law (see para 16).
- I (4) As to the award for future loss of earnings, the court was of the view that *R Rama Chandran v Industrial Court of Malaysia* [1997] 1 MLJ 145 was an exceptional case wherein the award of compensation should be

read within the parameters of the factual circumstances of the case. *Rama Chandran* was not an authority to support the proposition that in all cases of unfair dismissal, future loss of earnings must be awarded. One crucial point which must be noted in the Federal Court decision in *Rama Chandran* was that the Federal Court never awarded compensation in lieu of reinstatement. Hence, this could be the basis as to why future loss of earnings was awarded. However, in the present case, the industrial court had already granted backwages and compensation in lieu of reinstatement to the respondent. There was therefore no basis for the court to award future loss of earnings to the respondent (see para 21).

- (5) Future loss of earnings had never been an established and recognised head of damages in industrial court, save for the case of *Rama Chandran*. In *Koperasi Serbaguna Sanya Bhd Sabah v Dr James Alfred* [2000] 4 MLJ 87, this court and later confirmed by the Federal Court ruled that in industrial law involving compensation for unfair dismissal, there were only two types of compensation, which was backwages and compensation in lieu of reinstatement (see para 22).

[Bahasa Malaysia summary]

Ini adalah rayuan terhadap keputusan mahkamah tinggi bertarikh 24 Jun 2005 yang menolak permohonan perayu untuk kajian semula kehakiman untuk membatalkan Award Mahkamah Perusahaan No 1237 tahun 2004 di bawah A 53 Kaedah-kaedah Mahkamah Tinggi 1980. Responden diambil bekerja oleh perayu sebagai pembantu teknik rendah pada 5 Julai 1972. Tahun demi tahun, responden telah dinaikkan pangkat beberapa kali. Pada 16 Februari 1996 beliau memegang jawatan ketua sumber manusia, Sabah. Hampir kepada akhir 1996 terdapat penstrukturan semula perayu. Di bawah penstrukturan semula, responden ditempatkan sebagai seorang pembantu pengurus dengan gaji RM3,042 sebulan. Pertikaian berbangkit. Kepada responden, penempatannya adalah satu penurunan pangkat. Pada masa yang sama, perayu telah mengadakan satu Program Pengurangan Sukarela ('PPS'). Responden dipelawa untuk memasuki pakej di bawah PPS. Pada 27 May 1997 responden menerima PPS tersebut. Perkhidmatan responden ditamatkan pada 1 Jun 1999 menurut skim PPS tersebut. Beliau dibayar RM114,075. Responden mengatakan bahawa beliau dipaksa menerima skim PPS tersebut. Satu representasi telah dibuat di bawah s 20 Akta Perhubungan Perusahaan 1967 ('Akta'). Pada 30 October 1999, menteri merujuk perkara tersebut ke Mahkamah Perusahaan. Mahkamah Perusahaan di Award No 928 tahun 2002 bertarikh 1 November 2002 ('award pertama') mendapati bahawa responden telah dipecat secara konstruktif tanpa sebab dan alasan yang munasabah. Dalam memberikan award pertama, pengerusi yang bijaksana menyatakan bahawa pihak-pihak harus diberi peluang untuk

- A didengar atas isu remedi yang bersesuaian dan memerintahkan pihak-pihak untuk hadir sebelum mahkamah pada satu tarikh yang akan ditetapkan oleh mahkamah. Pada 28 September 2004, mahkamah perusahaan memberikan Award No 1237 tahun 2004 ('award kedua'). Mahkamah perusahaan memutuskan bahawa ia adalah tidak sesuai atau wajar untuk memberikan
- B responden relief biasa pengembalian jawatan. Dengan itu ia memberikan responden award gaji tunggakan sebanyak 53 bulan, kehilangan pendapatan masa depan dan pampasan untuk menggantikan pengembalian jawatan. Perayu memohon ke mahkamah tinggi untuk satu perintah *certiorari* untuk membatalkan award kedua tersebut. Pada 24 Jun 2005 mahkamah tinggi
- C menolak permohonan tersebut.

Diputuskan, membenarkan rayuan:

- D (1) Pendekatan biasa dalam memberikan award gaji tunggakan ialah bahawa pekerja diberikan award jumlah gaji tunggakan yang dicapai dengan mendarab gaji bulanan dengan nombor bulan di antara penamatan kerjanya dan tarikh award tersebut. Akan tetapi, terdapat satu amalan am dalam menghadkan award gaji tunggakan kepada
- E 24 bulan. Ini adalah sejajar dengan Nota Amalan No 1 Mahkamah Perusahaan 1987 ('Nota Amalan') (lihat perenggan 10).
- (2) Walaupun Nota Amalan tersebut adalah hanya satu garis panduan dan per se ia adalah tidak salah disisi undang-undang untuk mahkamah perusahaan memberikan award gaji tunggakan melebihi 24 bulan, mesti terdapat keadaan-keadaan yang menjustifikasikan untuk membenarkan
- F satu penyimpangan daripada Nota Amalan tersebut. Mahkamah perusahaan harus, dalam menggunakan budi bicaranya berbuat demikian mengikut prinsip keadilan dan kesaksamaan yang mantap. Ia adalah berdasarkan alasan ini dan untuk mengelakkan sembarangan
- G dalam award gaji tunggakan, Nota Amalan tersebut dibuat. Pada fakta-fakta kes ini, mahkamah berpendapat bahawa tiada keadaan-keadaan yang menjustifikasikan untuk membenarkan satu penyimpangan daripada Nota Amalan tersebut (lihat perenggan 13).
- H (3) Mahkamah perusahaan telah gagal mempertimbangkan bahawa walaupun responden memfailkan tuntutan pemecatan tidak adil pada 31 Januari 1999, Menteri hanya merujuk kes ini ke mahkamah perusahaan pada 31 Januari 1999, iaitu melebihi dua tahun. Kemudiannya terdapat kelewatan dalam menyelesaikan kes tersebut yang disebabkan oleh
- I keadaan-keadaan yang tidak boleh dikatakan disebabkan hanya oleh perayu. Dengan itu ia adalah tidak adil untuk mahkamah perusahaan untuk memberikan award kepada responden gaji tunggakan sepenuhnya tanpa menghadkan kepada 24 bulan oleh kerana ia mempunyai kesan menghukum perayu untuk kelewatan yang

- disebabkan oleh Menteri dan juga Mahkamah Perusahaan sendiri. Dengan kegagalan mempertimbangkan perkara-perkara yang relevan ini, mahkamah perusahaan telah melakukan satu kesilapan di sisi undang-undang (lihat perenggan 16). A
- (4) Berhubungan dengan kehilangan pendapatan masa depan, mahkamah berpendapat bahawa *R Rama Chandran v Industrial Court of Malaysia* [1997] 1 MLJ 145 adalah satu terkecuali di mana award pampasan sepatutnya dibaca dalam lingkungan keadaan-keadaan fakta kes tersebut. *Rama Chandran* bukannya otoriti untuk menyokong kenyataan bahawa dalam semua kes-kes pemecatan tidak adil, kehilangan pendapatan masa depan mesti diawardkan. Satu perkara penting yang harus diperhatikan dikeputusan mahkamah persekutuan di *Rama Chandran* ialah bahawa mahkamah persekutuan tidak memberikan award pampasan untuk menggantikan pengembalian jawatan. Dengan itu, ia mungkin menjadi asas mengapa kehilangan pendapatan masa depan diawardkan. Akan tetapi, dalam kes ini, mahkamah perusahaan telahpun memberi gaji tunggakan dan pampasan untuk menggantikan pengembalian jawatan kepada responden. Dengan itu tiada asas untuk mahkamah memberikan kehilangan pendapatan masa depan kepada responden (lihat perenggan 21). B C D E
- (5) Kehilangan pendapatan masa depan tidak pernah ditubuhkan dan dikenali sebagai ganti rugi di mahkamah perusahaan, kecuali kes *Rama Chandran*. Di *Koperasi Serbaguna Sanya Bhd Sabah v Dr James Alfred* [2000] 4 MLJ 87, mahkamah ini dan selepas itu disahkan oleh mahkamah persekutuan yang memutuskan bahawa dalam undang-undang perusahaan yang melibatkan pampasan untuk pemecatan tidak adil, terdapat dua jenis pampasan, iaitu gaji tunggakan dan pampasan untuk menggantikan pengembalian jawatan (lihat perenggan 22).] F G

Notes

For cases on award, see 8(1) *Mallal's Digest* (4th Ed, 2006 Reissue) paras 1351–1411.

For cases on claim for back wages, see 8(1) *Mallal's Digest* (4th Ed, 2006 Reissue) paras 1412–1413. H

Cases referred to

Chan Hock Liong v Associated Motor Industries (M) Sdn Bhd [1998] MLJU 132 (refd) I

Edaran Otomobil Nasional Sdn Bhd v Neoh Hock Lye, Quah Poh Huat, Lee Cheow Lian [1990] 1 ILR 163 (refd)

Koperasi Serbaguna Sanya Bhd Sabah v Dr James Alfred [2000] 4 MLJ 87; [2001] 3 MLJ 529 (folld)

- A** *Nestle Food Store Storage (Sabah) Sdn Bhd v Terrence Tan Nyang Yin* [2002] 1 ILR 280 (refd)
R Rama Chandran v Industrial Court of Malaysia [1997] 1 MLJ 145 (refd)
Sarawak Shell Bhd v Peter Lenjau & Anor [2004] 2 ILR 37 (refd)
- B** *Syarikat Kenderaan Melayu Kelantan v Transport Workers Union* [1992] 1 ILR 101 (refd)
TJ International Tobacco Sdn Bhd v Lau Thow Sin [2006] MLJU 191 (refd)
Vadiveloo Munusamy v General Tyre Retreaders Sdn Bhd [1999] MLJU 513 (refd)

- C** **Legislation referred to**
Industrial Relations Act 1967 s 20
Rules of the High Court 1980 O 53

- D** **Appeal from:** Application for Judicial Review No K-25–23 of 2004 (High Court, Kota Kinabalu)

- Christopher Chong KH (Lind Willie Wong & Chin) for the appellant.*
Rizman Borhan (Ansari & Co) for the respondent.

- E** **Raus Sharif JCA(delivering judgment of the court):**

- F** [1] This is an appeal against the decision of the High Court dated 24 June 2005 which dismissed the appellant’s application for judicial review to quash the Industrial Court Award No 1237 of 2004 under O 53 of the Rules of the High Court 1980. We heard the appeal on 24 July 2007 and unanimously allowed the appeal with costs.

- G** [2] The brief facts of the case are these. The respondent was employed by the appellant (formerly known as Jabatan Telekom Malaysia) as Pembantu Teknik Rendah on 5 July 1972. Over the years, the respondent was promoted several times. On 16 February 1996 he was holding the post of Head of Human Resources, Sabah.

- H** [3] Towards the end of 1996 there was a reorganisation of the appellant. Under the reorganisation, the respondent was emplaced as Assistant Manager with a monthly salary of RM3,042. A dispute arose. To the respondent, his placement as an Assistant Manager was a demotion.

- I** [4] During the same period, the appellant was implementing a Voluntary Reduction Programme (‘VRP’). The respondent was invited to participate in the package under the VRP. On 27 May 1997 the respondent accepted the

VRP. The respondent service was terminated on 1 June 1999 pursuant to the VRP scheme. He was paid RM114,075. A

[5] It was the contention of the respondent that he was forced to accept the VRP scheme. He alleged that the VRP was done in bad faith and his service was wrongfully terminated by the appellant. B

[6] The respondent, thereafter made representations under s 20 of the Industrial Relations Act 1967 ('the Act') to the Industrial Relation Department complaining that he had been constructively dismissed without just cause and excuse. On 30 October 1999, the Minister of Human Resources ('Minister') referred the matter to the Industrial Court. C

[7] The Industrial Court in Award No 928 of 2002 dated 1 November 2002 ('first award') ruled that the respondent was constructively dismissed without just cause and excuse. In making the first award, the learned Chairman noted that parties should be given a chance to be heard on the issue of appropriate remedy and directed parties to appear before the court on a date to be fixed by the court. D

[8] On 28 September 2004, the Industrial Court handed down Award No 1237 of 2004 ('second award'). The Industrial Court held that it was not proper or expedient to grant the respondent the normal relief of reinstatement. It therefore awarded the respondent the following monetary compensations. E

(i)(a) Backwages from the date of dismissal (1 June 1997) to the last date of hearing on 21 November 2001 F

RM3,042 x 53 months = RM161,226

(b) Loss of future earning: G

Claimant was born on 13 June 1954 and his present age is therefore 50 years 3 months. He would reached 55 years of age on 13 June 2009 ie, almost another 57 months from the date of the award. For loss of future earning, I would award: H

RM3,042.00 x 57 months = RM173,394

(ii) Compensation in lieu of reinstatement (one month salary for every completed year of service ie, from 1972 till 1997): I

RM3,042.00 x 25 years = RM76,050

Total amount	RM410,670
Less VRP taken	RM114,000

- A** *Nestle Food Store Storage (Sabah) Sdn Bhd v Terrence Tan Nyang Yin* [2002] 1 ILR 280 (refd)
R Rama Chandran v Industrial Court of Malaysia [1997] 1 MLJ 145 (refd)
Sarawak Shell Bhd v Peter Lenjau & Anor [2004] 2 ILR 37 (refd)
- B** *Syarikat Kenderaan Melayu Kelantan v Transport Workers Union* [1992] 1 ILR 101 (refd)
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- G** [2] The brief facts of the case are these. The respondent was employed by the appellant (formerly known as Jabatan Telekom Malaysia) as Pembantu Teknik Rendah on 5 July 1972. Over the years, the respondent was promoted several times. On 16 February 1996 he was holding the post of Head of Human Resources, Sabah.

- H** [3] Towards the end of 1996 there was a reorganisation of the appellant. Under the reorganisation, the respondent was emplaced as Assistant Manager with a monthly salary of RM3,042. A dispute arose. To the respondent, his placement as an Assistant Manager was a demotion.

- I** [4] During the same period, the appellant was implementing a Voluntary Reduction Programme (‘VRP’). The respondent was invited to participate in the package under the VRP. On 27 May 1997 the respondent accepted the

(iv) The application of the 24 months' limit in awarding backwages is a question of fact depending upon all the circumstances of each case. The overriding principle to be applied at the end of the day is that when awarding compensation in lieu of reinstatement and backwages, this court will be guided by what is reasonable and fair to both parties in all the circumstances of the case.

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[12] The learned High Court judge agreed with the Industrial Court and said it in the following words:

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Only the Industrial or High Courts and the appellate courts have the jurisdiction to interpret law as to the amount of the number of month of backwages that can be awarded and they can make their decision upon an interpretation of the relevant law and not directed to do so as the said Practice Note attempt to do so. The law that calls for interpretation is s 30 of the Industrial Relations Act and there is no pre-set limit there as to the number of months of backwages that can be awarded. In fact the Federal Court in *R Rama Chandran v The Industrial Court of Malaysia & Anor* [1997] 1 MLJ 145 had allowed 88 months of backwages. Therefore it is not wrong in law that an award of backwages exceeded the 24 months mentioned in the said practice direction.

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[13] We are in agreement with the observations of the Industrial Court as well as the learned High Court judge on the applicability of the Practice Note. The Practice Note is merely a guideline and per se it is not wrong in law for the Industrial Court to award backwages exceeding the 24 months mentioned in the Practice Note. But, we are of the view that there must be justifiable circumstances to warrant a departure from the Practice Note. This is because over the years, the Industrial Court had consistently followed the Practice Note, save in exceptional cases, (see *Sarawak Shell Bhd v Peter Lenjau & Anor* [2004] 2 ILR 37; *Nestle Food Store Storage (Sabah) Sdn Bhd v Terrence Tan Nyang Yin* [2002] 1 ILR 280; *Edaran Otomobil Nasional Sdn Bhd v Neoh Hock Lye, Quah Poh Huat, Lee Cheow Lian* [1990] 1 ILR 163; *Syarikat Kenderaan Melayu Kelantan v Transport Workers Union* [1992] 1 ILR 101). The said practice, save in exceptional cases had been approved or endorsed by the High Courts (see *Chan Hock Liong v Associated Motor Industries (M) Sdn Bhd* [1998] MLJU 132; *Vadiveloo Munusamy v General Tyre Retreaders Sdn Bhd* [1999] MLJU 513; *TJ International Tobacco Sdn Bhd v Lau Thow Sin* [2006] MLJU 191).

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[14] Thus, it is our respectful view that while we agree that the quantum of backwages is very much at the discretion of the Industrial Court but the Industrial Court must, in exercising its discretion do so in accordance to established principle of justice and fairness. We believe it is for this reason and to avoid arbitrariness in the award of backwages that the Practice Note was

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A formulated. The rationale for limiting backwages to 24 months was well elucidated in *Nestle Food Store Storage* where the learned Chairman of the Industrial Court, Mr Lim Heng Seng said:

B The prescription of the multiplier of 24 months strikes a right balance between the interests of the parties. It takes into account a realistic and reasonable time frame for the workman to receive from the setback of his dismissal. It also taken into account the justifiable concern that delays in the statutory process of conciliation, reference and adjudication should not inflate the quantum of backwages awarded and unduly penalised employers by exorbitant awards which have no rational relationship or nexus between loss and liability. The formula affords the workman a monetary backwages which is fair and adequate for loss of earnings arising from his dismissal.

D [15] We agree with the above view. To depart from the general practice, without good reasons, would cause undue variation to the existing process of awarding and accessing backwages. On the facts of this case, we are of the view that there were no justifiable circumstances to warrant the departure from the Practice Note. For this, the following facts are relevant:

E (i) The respondent was held to be constructively dismissed on 19 May 1997. However, the case was referred to the Industrial Court on 30 October 1999, which was more than two years and five months after the said dismissal.

F (ii) All pleadings were filed expeditiously and the matter was originally fixed for hearing on 2 and 3 January 2001. The aforesaid dates were, however, vacated at the appellant's request and fresh hearing date were given. The matter was heard from 19 to 21 November 2001. At the conclusion of the hearing on 21 November 2001, the parties were directed to file their respective submissions and submissions in reply.

G All written submissions were filed by the parties as early as 11 January 2002. The Industrial Court only handed down the first award on 1 November 2002.

H (iii) After making the first award, the learned Chairman noted that the parties should be given a chance to be heard on the issue of appropriate remedy. On 21 January 2003, the parties appeared before the learned Chairman for further directions on the matter. The Industrial Court agreed to the parties request to file written submission the issue of remedy.

I (iv) On 17 February 2003, the respondent's written submission was filed in court. The applicant then submitted its written submission 10 March 2003. The respondent's written submission in reply was filed on 24 March 2003. Vide a letter dated 16 April 2003, the Industrial Court directed parties to make further written submission. Pursuant to the

said direction, the respondent filed a further written submission dated 23 April 2003. In response, the applicant filed a further written submission dated 25 April 2003. The respondent then submitted the respondent's written submission dated 30 April 2003.

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- (v) The Industrial Court Chairman was elevated as Judicial Commissioner in early May 2003. A new Chairman took over the case, and the new Chairman handed the second award on 28 September 2004.

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[16] Obviously there was a considerable delay in the completion of the hearing and the appellant could not be said to be solely responsible for the delay. It may be true that the appellant had requested for an adjournment, but this only occasioned a minimal delay of 10 months. But the Industrial Court failed to consider that although the respondent had filed his unfair dismissal claim in 1997, the Minister only referred the case to the Industrial Court on 31 January 1999, which was more than two years late. Then there was the delay in disposing the case due to circumstances which could not be attributed solely to the appellant. Thus, it is unfair for the Industrial Court to award the respondent full backwages without limiting the same to 24 months as it has the effect of punishing the appellant for the delay caused by the Minister as well as the Industrial Court itself. By failing to consider the said relevant matters, the Industrial Court had committed an error of law. The award on full backwages is liable to be quashed.

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[17] In addition, it is our respectful view that the Industrial Court in granting full backwages exceeding 24 months, had also erred in law in considering the following irrelevant factors (p 33 of the second award):

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- (i) that the respondent's venture into business after his alleged dismissal was not successful;
- (ii) that the respondent had been an employee all his working life and to make a switch at such late stage of his working life as a businessman would not be beneficial to him; and
- (iii) that the respondent had been out of touch with his previous position for such a long time and would not likely be employed in a similar position elsewhere.

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[18] To us, such factors and considerations are irrelevant to the issue of backwages. Why should the appellant be made responsible for the respondent's failure in business. The respondent's conduct and decision in venturing into his eventually unsuccessful business was something not within the appellant's control. This was precisely what the Industrial Court erroneously took into account.

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- A [19] It is for the above reasons that the award on backwages was reduced to 24 months in line with the Practice Note of limiting backwages to 24 months.

AWARD FOR FUTURE LOSS OF EARNINGS

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- C [20] The Industrial Court, in addition to the granting of compensation in lieu of reinstatement and backwages to the respondent, had also granted compensation for loss of future earnings amounting to RM173,394 to the respondent which was computed from the date of the final award (28 September 2004) up to the date of respondent's retirement (ie 13 July 2009). The respondent was, therefore, awarded an additional 57 months of salary as loss of future earnings. The Federal Court case of *R Rama Chandran v Industrial Court of Malaysia* [1997] 1 MLJ 145 was cited as the authority for doing so. In *Rama Chandran*, the Federal Court had granted compensation for loss of employment to the dismissed employee from the date of dismissal up to retirement date.

- E [21] With respect, we are of the view that *Rama Chandran* is an exceptional case wherein the award of compensation should be read within the parameters of the factual circumstances of the case. *Rama Chandran* is not an authority to support the proposition that in all cases of unfair dismissal, future loss of earnings must be awarded. One crucial point which must be noted in the Federal Court decision in *Rama Chandran* is that the Federal Court never awarded compensation in lieu of reinstatement. Hence, this could be the basis as to why future loss of earnings was awarded. However, in the present case, the Industrial Court had already granted backwages and compensation in lieu of reinstatement to the respondent. There is therefore no basis for the court to award future loss of earnings to the respondent.

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- H [22] Future loss of earnings has never been an established and recognised head of damages in Industrial Court, save for the case of *Rama Chandran*. In *Koperasi Serbaguna Sanya Bhd Sabah v Dr James Alfred* [2000] 4 MLJ 87, this court ruled that in Industrial law involving compensation for unfair dismissal, there are only two types of compensation, which is backwages and compensation in lieu of reinstatement. This court ruled as follows:

- I In Industrial law, the usual remedy for unjustified dismissal is an order of reinstatement. It is only in rare cases that reinstatement is refused. For example, as here, where relationship between the parties has broken down so badly that it would not be conducive to industrial harmony to return the workman to his place of work. *In such a case, the Industrial Court may award monetary compensation. Such as award is usually in two parts. First, there is the usual award for the arrears of wages or backwages, as it is sometimes called. It is to compensate the workman for the period*

that he has been unemployed because of the unjustified act of dismissal. Second, there is an award of compensation in lieu of reinstatement. (Emphasis added.)

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[23] The above decision of this court was affirmed, on appeal, by the Federal Court in *Dr James Alfred v Koperasi Serbaguna Sanya Bhd & Anor* [2001] 3 MLJ 529. Thus, it is our respectful view that the Industrial Court in the awarding of the future loss of earnings to the respondent had therefore misconstrued the ratio of the case of *Rama Chandran*. The Industrial Court had failed to appreciate that the ruling in *Rama Chandran* on the compensation was peculiar to the factual circumstances of the case and not intended to be of general application in all Industrial Court cases. We therefore set aside the Industrial Court award for future loss of earnings.

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[24] For the foregoing reasons we allowed the appeal as stated with costs and ordered the deposit be refunded to the appellant.

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Appeal allowed.

Reported by Sally Kee

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